FILED
MAY 28 1932

FILE COPY

No. 19, Original

In the Supreme Court of the United States

OCTOBER TERM, 1931

EX PARTE: THE UNITED STATES, PETITIONER

MOTION FOR LEAVE TO FILE A PETITION FOR A WRIT OF MANDAMUS, AND PETITION FOR A WRIT OF MANDAMUS TO THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA AND TO HONORABLE OLIVER B. DICKINSON, UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In the Supreme Court of the United States

OCTOBER TERM, 1931

NO. ——, ORIGINAL

EX PARTE: THE UNITED STATES, PETITIONER

MOTION FOR LEAVE TO FILE A PETITION FOR A WRIT OF MANDAMUS

Comes now the Solicitor General and moves the Court for leave to file the attached petition for a writ of mandamus, directed to the United States District Court for the Eastern District of Pennsylvania, and Honorable Oliver B. Dickinson, United States District Judge for the Eastern District of Pennsylvania, directing him to vacate a certain order made by him denying a motion for a bench warrant in the case of *United States* v. *Joseph V. Wingert,* and directing him to issue such bench warrant.

THOMAS D. THACHER,
Solicitor General.

MAY, 1932.

118371—32——1

In the Supreme Court of the United States

OCTOBER TERM, 1931

No. ——, ORIGINAL

EX PARTE: THE UNITED STATES, PETITIONER

PETITION FOR A WRIT OF MANDAMUS TO THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, AND TO HONORABLE OLIVER B. DICKINSON, UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

To the honorable the CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Solicitor General, on behalf of the United States, respectfully represents as follows:

On the tenth day of March, 1932, a grand jury of the United States, lawfully summoned in the Eastern District of the State of Pennsylvania, presented an indictment against one Joseph V. Wingert, charging him in four counts with certain violations of the banking laws of the United States. This indictment was entered in the District Court as Cause No. 5195, December Term, 1931.

In the first count of this indictment it was charged that Wingert, who was secretary and treasurer of the North City Trust Co. of Pennsylvania, a banking institution incorporated and existing under the laws of the Commonwealth of Pennsylvania, and a member of the Federal Reserve Bank of Philadelphia, did unlawfully and feloniously embezzle from said member bank the sum of $900 with intent to injure and defraud the said member bank, against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided. The other counts of this indictment charged other embezzlements in similar language.

On the 22nd day of March, 1932, the United States Attorney for the Eastern District of Pennsylvania presented to the court a written petition praying that a bench warrant issue for the apprehension and arrest of Joseph V. Wingert. On consideration thereof, the District Court on March 22, 1932, denied the petition and declined to issue a bench warrant for the arrest of Wingert, referring for its reasons for this action to an opinion which it had previously filed in Cause No. 4867, March Session, 1931. In this previous opinion the court had refused to issue a bench warrant for the arrest of Wingert on a previous indictment which had been returned on May 27, 1931, by the grand jury in the Eastern District of Pennsylvania.

Copies of the indictment in Cause No. 5195, December Term, 1931, the petition of the United States Attorney for a bench warrant, and the order of the United States District Court denying the motion for a bench warrant, duly certified by the Clerk of the United States District Court under the seal of that court, have been filed with the Clerk of this Court, and are set forth as Exhibit A to this petition (*infra,* pp. 7–15). A copy of the opinion of the United States District Court, filed originally in Cause No. 4867, March Session, 1931, and adopted by the court in Cause No. 5195, December Term, 1931, by its order of March 22, 1932, duly certified by the Clerk of the United States District Court under seal of that court, has been filed with the Clerk of this Court, and is set forth as Exhibit B of this petition (*infra,* pp. 16–25). All the matters herein alleged are of record.

Your petitioner claims that the action of the United States District Court for the Eastern District of Pennsylvania in denying the motion of the United States Attorney for the issuance of a bench warrant for the arrest of Joseph V. Wingert, and in refusing to issue a bench warrant upon an indictment duly returned and fair upon its face, charging a violation of the criminal laws of the United States, is entirely without warrant of law, and is not a matter within the judicial discretion of the United States District Court.

Wherefore, your petitioner prays that an alternative writ of mandamus issue out of this Court to the

Honorable Oliver B. Dickinson, United States District Judge for the Eastern District of Pennsylvania, and to the court itself, directing that the order entered on the twenty-second day of March, A. D. 1932, denying the motion for a bench warrant for the arrest of Wingert be vacated and set aside, and that a bench warrant for the arrest of Wingert be duly issued, or that the said Honorable Oliver B. Dickinson, judge of said court, show cause on a day to be fixed by this Honorable Court why this should not be done.

THOMAS D. THACHER,
Solicitor General.

MAY, 1932.

EXHIBIT A

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. 5195, December Term, 1931

UNITED STATES OF AMERICA

v.

JOSEPH V. WINGERT

ORDER

And now, to wit, this 22nd day of March, A. D. 1932, the within motion for bench warrant for the arrest of defendant in the above entitled case is denied on the opinion filed in cause No. 4867, March Sessions, 1931.

By the court:

(S.) DICKINSON, *J.*

File No. 14724–2.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. 5195, December Sessions, 1931

UNITED STATES OF AMERICA

v.

JOSEPH V. WINGERT

PETITION FOR BENCH WARRANT

To the honorable, the JUDGES OF THE ABOVE ENTITLED COURT:

The Petition of Edward W. Wells respectfully represents:

1. That he is United States Attorney for the Eastern District of Pennsylvania.